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Date of Decision: 12th January 1996

CRIMINAL APPEAL NO. 1466 OF 1984

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

and

HONOURABLE MR. JUSTICE H.R. SHELAT

1. Whether Reporters of Local Papers may  
be allowed to see the judgment? No

2. To be referred to the Reporter or not?  
No

3. Whether their Lordships wish to see  
the fair copy of judgment? No

4. Whether this case involves a  
substantial question of law as to the  
interpretation of the Constitution of  
India, 1950 or any order made  
thereunder? No

5. Whether it is to be circulated to the  
Civil Judge? No

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Shri S.R. Divetia, Addl. Public Prosecutor, for the Appellant

Shri M.J. Buddhahatti, Advocate, for the Respondents  
(appointed)

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CORAM: A.N. DIVECHA & H.R. SHELAT, JJ.  
(Date: 12th January 1996)

ORAL JUDGMENT (per Divecha, J.)

The judgment and order of acquittal passed by the  
learned Additional Sessions Judge of Ahmedabad (Rural) at Narol  
on 31st August 1984 in Sessions Case No. 74 of 1984 is under  
challenge in this appeal at the instance of the prosecuting

agency after obtaining leave from this Court for the purpose.

2. The facts giving rise to this appeal move in a narrow compass. The prosecutrix in this case is one woman by the name of Manjulaben. She is stated to be a daughter of one Somaji Talshi. Her father is stated to be a gurubhai (a disciple-brother) of one Dharamnath. It is the prosecution version that Dharamnath sent for the prosecutrix for helping him in preparation of loaves to be used for the purpose of the festival of Shivratri at Junagadh. It does not become clear from the material on record on what exact day or date the festival of Shivratri was observed. The prosecutrix is said to have been residing with her father at Wankaner. She is stated to have travelled from Wankaner to Ahmedabad on 28th February 1984. It is her case that she left Wankaner by a bus leaving in the morning and reached Ahmedabad some time in the evening. She went to the ashram of Dharamnath. It was found closed. She therefore took shelter at the small room of one Kartar Singh who had a garage nearby. It is the case of the prosecution that in the room she was sleeping the respondents herein entered after removal of sheets on the roof-top and committed rape of the prosecutrix one after another at about 1 a.m. on 29th February 1984. Dharamnath came back to his ashram in the morning of 2nd March 1984. One woman, named, Gangaben, accompanied him. The prosecutrix is reported to have informed Gangaben about the incident. Thereafter she lodged her complaint of the incident to the Police Sub-Inspector of the Ellis Bridge Police Station in Ahmedabad on 3rd March 1984. That complaint set the investigating machinery into motion. On completion of the investigation, the charge-sheet was submitted in the court of the Chief Judicial Magistrate of Ahmedabad (Rural) at Narol charging both the accused with the offences punishable under sec. 451 and 376 of the Indian Penal Code, 1860 (the IPC for brief). Since the trial of the offence punishable under sec. 376 of the IPC was beyond the competence of the trial magistrate, the case was committed to the Sessions Court of Ahmedabad (Rural) at Narol for trial and disposal. It came to be registered as Sessions Case No. 74 of 1984. It appears to have been assigned to the learned Additional Sessions Judge for trial and disposal. The charge against the accused was framed on 17th August 1984. Neither accused pleaded guilty to the charge. They were thereupon tried. After recording the prosecution evidence and after recording the further statement of each accused under sec. 313 of the Code of Criminal Procedure, 1973 and after hearing rival submissions, by his judgment and order passed on 31st August 1984 in Sessions Case No. 74 of 1984, the learned Additional Sessions Judge of Ahmedabad (Rural) at Narol acquitted both the accused of the charge levelled against them. That aggrieved the prosecution agency. It has therefore filed this appeal before this Court after obtaining leave for the purpose and has questioned the

correctness of the aforesaid judgment and order of acquittal passed by the learned trial Judge.

3. Learned Additional Public Prosecutor Shri Divetia for the appellant has taken us through the entire evidence on record in support of his submission that the learned trial Judge was not justified in acquitting the accused of the charge levelled against them in view of the clear and cogent evidence of the prosecutrix on record. On the other hand, learned Advocate Shri Buddhabhatti for the respondents has urged that, on a careful scrutiny of the evidence on record, the learned trial Judge has come to the conclusion that the prosecution has not been able to prove the case against the accused beyond reasonable doubt and that finding recorded by the learned trial Judge calls for no interference by this Court in this appeal. It has also been urged on behalf of the defence that we are hearing this appeal against the judgment and order of acquittal and, if two views are possible, the view taken by the learned trial Judge deserves to be accepted in view of settled principles of law in that regard.

4. Ordinarily, we agree with learned Additional Public Prosecutor Shri Divetia in his submission to the effect that a woman would not openly put her honour to stake. When a victim-woman charges some one with an offence of rape, it is made known to all that her chaste life has been disturbed. Ordinarily no woman would do so except at the peril of losing her esteem in the society. This submission urged before us by learned Additional Public Prosecutor Shri Divetia has to be accepted.

5. However, in this case the learned trial Judge has not chosen to rely on the evidence led by and on behalf of the prosecution at trial. The learned trial Judge has doubted the veracity of the deposition of the prosecutrix at Ex. 7 by giving cogent and convincing reasons for the purpose. Several contradictions are found in her oral testimony at Ex. 7 in the context of her complaint at Ex. 8. One important contradiction is with respect to her omission in her deposition at Ex. 7 with respect to her first meeting with respondent No.2 herein and one scooterist soon after alighting at the Juhapura bus stand. The contradiction that she did not alight at the Juhapura bus stand may be ignored as too trivial to be overemphasised. Another material contradiction emerging from the record is regarding her disclosure of the incident to Kartar Singh (Prosecution Witness No. 5 at Ex. 17). She says that she reported the incident to Kartar Singh in the morning. In his deposition at Ex. 17, Kartar Singh says that she was found coming out of the room at about 1.30 a.m. and, when asked, she stated practically nothing to him about the incident but only stated that she became panicky on account of some noise or sound at the roof-top.

There are other material contradictions also in her deposition at Ex. 7. The aforesaid two material contradictions in her evidence would render her version somewhat doubtful.

6. It may be noted at this stage that the medical evidence on record by means of deposition of Dr. V.K. Acharya (Prosecution Witness No. 2 at Ex. 9) and the medical certificate issued by him at Ex. 10 would go to show that the prosecutrix was habituated to sexual intercourse for quite some time. It also transpires from her complaint at Ex. 8 that she had known the accused from earlier times. Kartar Singh at Ex. 17 has deposed that the prosecutrix used to visit the ashram of Dharamnath in the past also. The familiarity of the prosecutrix with the accused cannot be overlooked in the context.

7. The learned trial Judge has also taken note of the factual position that there was no resistance on the part of the prosecutrix at the time of commission of the alleged offence by the respondents herein. The learned trial Judge has thereupon rightly inferred consent on the part of the prosecutrix.

8. One important aspect of the matter also deserves to be taken into consideration at this stage. It is the case of the prosecutrix that she was summoned to Ahmedabad from Wankaner for the purpose of preparation of loaves to be used on the occasion of the festival of Shivratri at Junagadh. It transpires from the evidence of Dharamnath (at whose place the prosecutrix was supposed to go for preparation of loaves) that he had left for Junagadh on 24th January 1984 about 4 days prior to Shivratri. It was obvious that the prosecutrix knew that Dharamnath at Ex. 13 would go to Junagadh on the occasion of Shivratri. His deposition at Ex. 13 makes it clear that Shivratri was on 28th February 1984. In that view of the matter, there was no reason for her to travel all her way from Wankaner to Ahmedabad under the pretext of preparation of loaves for Dharamnath at Ex. 13 to be used on the occasion of Shivratri at Junagadh. This aspect of the case also makes her version doubtful if not absolutely incredible and untrustworthy.

9. In view of our aforesaid discussion, we are of the opinion that the learned trial Judge has made no error or mistake in coming to the conclusion that the prosecution failed to prove its case against the respondents herein beyond any reasonable doubt. The impugned judgment and order of acquittal calls for no interference by this Court in this appeal.

10. Before parting with the judgment, we shall be failing in our duty if we do not record a note of appreciation with respect to valuable assistance rendered by learned Advocate Shri M.J. Buddhabhatti on behalf of the defence in this case. It appears that the respondents did not choose to appear through any

advocate after the notice of this appeal was served to them. Learned Advocate Shri Buddhabhatti was present in this court and he readily agreed to assist this Court for the defence in this appeal. We therefore thought it fit to appoint him. It must be said to his credit that he got himself ready within half an hour's time on perusal of the record of this appeal.

11. In the result, this appeal fails. It is hereby dismissed. The bail bonds furnished by the respondents are ordered to be cancelled. The muddamal articles may be disposed of as directed by the learned trial Judge.